UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN

AFT MICHIGAN,

Plaintiff,

v.

PROJECT VERITAS, AND
MARISA L. JORGE.

Defendants.

Case No. 17-cv-13292
Hon. Paul Borman

DEFENDANT PROJECT VERITAS'S EMERGENCY MOTION TO STRIKE PLAINTIFF'S SECOND AMENDED COMPLAINT AND EXTEND DEADLINE BY WHEN DEFENDANTS MUST RESPOND

EXPEDITED RELIEF REQUESTED

Defendant Project Veritas, by and through counsel, Butzel Long, P.C., hereby files this Emergency Motion to Strike Plaintiff's Second Amended Complaint (ECF Dkt. # 6). Pursuant to Fed. R. Civ. P. 15, a party may amend its pleading once as a matter of course, and in all other cases may amend its pleading *only* with the opposing party's written consent or the court's leave. Because Plaintiff has already amended its Complaint once (and now attempts to do so for a second time), and because Plaintiff did not seek, let alone receive, the opposing party's written consent or this Court's leave, this Second Amended Complaint and Demand for Trial by Jury is improper and unauthorized.

The Second Amended Complaint disrupts this Court's briefing schedule set in this case on the question of injunctive relief. As such, and due to a need to know that to which Defendants must reply and by when they must so reply, Defendant Project Veritas requests that this Court strike Plaintiff's attempted Second Amended Complaint. Moreover, in an attempt to reduce Defendant's need to file a responsive pleading only to have Plaintiff later attempt to again amend its pleadings, Project Veritas requests that the Court order that Defendants need not file an Answer or motion in lieu of an Answer until after the briefing and hearing on Plaintiff's Motion for Injunctive Relief is completed, or at the earliest, within fourteen (14) days of the Court's Order on this Motion, or as provided in the Court Rules, whichever is later.

Because of the upcoming timelines in this case and the importance of the responses to Plaintiff's several pleadings and motions for injunctive relief, Project Veritas respectfully requests that this Court issue an Order on this Motion in an expedited fashion to give the parties finality in knowing to which pleading Defendants should direct their responses and when those responses must be filed.

Respectfully submitted,

BUTZEL LONG, a professional corporation

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Dated: October 18, 2017

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN

AFT MICHIGAN,

Plaintiff,

v.

PROJECT VERITAS, AND
MARISA L. JORGE.

Defendants.

Case No. 17-cv-13292
Hon. Paul Borman

DEFENDANT PROJECT VERITAS'S BRIEF IN SUPPORT OF ITS EMERGENCY MOTION TO STRIKE PLAINTIFF'S SECOND AMENDED COMPLAINT AND EXTEND DEADLINE BY WHEN DEFENDANTS MUST RESPOND

STATEMENT OF THE ISSUES PRESENTED

Should the Court strike Plaintiff's Second Amended Complaint and Demand for Jury Trial (ECF Dkt. # 6), that was filed without written consent of the other party and without seeking leave of Court, for violating Fed. R. Civ. P. 15 and because Plaintiff did not cite any authority, basis, or permission for leave to file such a Second Amended Complaint, and should the Court additionally grant an extension of when Defendants must file an Answer, Motion in lieu of an Answer, or otherwise Respond to Plaintiff's First Amended Complaint?

CONTROLLING AND MOST APPROPRIATE AUTHORITY

Federal Rule of Civil Procedure 15

ARGUMENT

Defendant Project Veritas, by and through counsel, Butzel Long, P.C., files this Brief in Support of its Emergency Motion to Strike Plaintiff's Second Amended Complaint (ECF Dkt. # 6). Plaintiff's attempted Second Amended Complaint violates the Federal Rules of Civil Procedure and is unauthorized and improper. More importantly, Defendant Project Veritas has several upcoming dates by which it must file responses to Plaintiff's First Amended Complaint and its Supplemental Brief in Support of its Motion for Injunctive Relief. Plaintiff's improper and unauthorized Second Amended Pleading casts doubt upon which pleading governs and when Defendant's Answer or Motion in Lieu of an Answer is due.

For all of the reasons set forth herein, Defendant Project Veritas respectfully requests that this Court strike Plaintiff's Second Amended Complaint. Additionally, due to the briefing schedule set in this case on the question of injunctive relief and in an attempt to eliminate Defendant's need to file a responsive pleading only to have Plaintiff later attempt to again amend its pleadings, Defendant requests that this Court order that Defendants need not file an Answer or a motion in lieu of an answer until after the briefing and hearing on Plaintiff's motion for injunctive relief is completed, or at the earliest, within fourteen (14) days from the date of this Court's order on this Motion.[1]

Procedural History

On or about September 28, 2017, Plaintiff filed its initial Complaint in the Wayne County Circuit Court. *See* ECF Dkt. #1, Exhibit 1. On or about October 5, 2017, Plaintiff filed a First Amended Complaint and Demand for Trial by Jury. *Id.* On October 6, 2017, Defendants filed a Notice of Removal, removing the case to this Court. This Court has, since that time, issued a briefing schedule on Plaintiff's motion for injunctive relief that it filed based upon (and granted upon) its original Complaint.

On October 17, 2017, Plaintiff then proceeded—without seeking consent from the opposing party, concurrence in the relief sought, or leave from this Court—to file a "Second Amended Complaint and Demand for Jury Trial." Plaintiff, however, has no authority or basis upon which to file such a Second Amended Complaint. As such, that filing should be held to have no force and effect and Defendant requests that this Court strike that pleading.

Fed. R. Civ. P. 15(a)(1), titled "Amending as a Matter of Course," states that "A party may amend its pleading **once** as a matter of course within: (A) 21 days after serving it, or (B) if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under 12(b), (e), or (f), whichever is earlier." Rule 15(2) then clearly states that: "**In all other cases, a party may amend its pleading only with the opposing party's written consent or the court's leave.**" (Emphasis added.) Plaintiff has not followed this rule.

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[1] Or within such time as provided by Court Rule, whichever is later, for those Defendants who have not yet been served.

It is undisputed (and titled) that Plaintiff's latest filing is its Second Amended Complaint. Because Plaintiff only had the right to file one Amendment as a matter of course, this Second Amended Complaint could only be filed "with the opposing party's written consent or the court's leave." Plaintiff never contacted Project Veritas or its counsel before filing its Second Amended Complaint, and certainly never obtained written consent. Nor did Plaintiff ever seek, let alone receive, the Court's leave to so file.

The improper and unauthorized filing is not only procedurally defective and improper under the rules, but it also greatly impacts and unfairly prejudices Defendant. Defendant is already working to file an answer or motion in lieu of an answer to Plaintiff's First Amended Complaint, which has an imminent deadline forthcoming. Moreover, this is being done within the midst of Defendant also abiding by the Court's briefing schedule for Plaintiff's motion for injunctive relief. This Second Amended Complaint—if it were accepted—changes not only that to which the Defendant must respond, but it also changes the date by which it must so respond. Defendant could also be subject to filing a response to Plaintiff's current Amended Complaint, only to have Plaintiff then seek to amend that complaint again, causing Defendant to incur even more attorneys' fees than it already has. Moreover, while this matter was rushed into court and a Temporary Restraining Order was obtained in *ex parte* fashion, Plaintiff continues to move the proverbial goalposts on Defendant as it attempts to assert its defenses and opposition to Plaintiff's case and its motion seeking extraordinary relief.

The Defendants in this case—who have been subjected to a Temporary Restraining Order without even the opportunity to be heard on the matter—have a right to know that to which they are obligated to respond and by when they must do so. Respectfully, Project Veritas requests that the Court strike the Plaintiff's Second Amended Complaint. If Plaintiff does properly file a motion seeking leave to file such an Amended Complaint, Defendant requests that consideration of any such motion be held in abeyance until after the briefing and hearing already scheduled on Plaintiff's pending motion for injunctive relief.[2] Additionally, due to the time lost in filing this emergency motion and due to the uncertainty that Plaintiff's Second

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[2] At which point it is believed that Plaintiff will be unable to state a claim upon which relief can be granted on many, if not all, of its causes of actions and amended causes of action, and such amendments will be proven to be futile.

Amended Complaint has caused, Defendant Project Veritas requests that the Court issue an Order setting a due date for Defendants' Answer or motion in lieu of an answer for after the hearing date on the injunctive relief sought, or at the earliest fourteen (14) days from the date upon which the Court enters an Order on this motion.[3]

Respectfully submitted,

BUTZEL LONG, a professional corporation

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Dated: October 18, 2017

[3] Or later, since there are Defendants who have not yet been properly served and upon whom service has not yet been effectuated and therefore no response of any kind is yet due or coming due.

CERTIFICATE OF SERVICE

I hereby certify that on **October 18, 2017**, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing to all registered ECF participants listed for this case.

Respectfully submitted,

BUTZEL LONG, a professional corporation

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